IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8774 of 2004

Minoo Rustom Joshi ...Petitioner

vs.

Bahadur Dhunji Shah Todiwala. ...Respondent

Mr.S.Shinghrani, for Petitioners.

Mr. P. N.Pathak, for Respondent

CORAM: R.M.S.Khandeparkar,J.

DATED: 1st November,2004

P.C.:-

1. Heard the learned Advocates for the parties. Perused the records. The petitioner challenges the orders passed by the Courts below for striking of the defence of the petitioner in the eviction proceedings bearing Suit no.376/761 of 1997. By order dated 2nd August,2001, the Trial Court had directed the Petitioner to comply with the earlier order dated 16th April,1999 and to deposit the arrears of rent as per the said order within one month from 2nd August,2001, and thereafter to deposit monthly rent on or before 10th day of every month at the rate of Rs.341.97

ps. till the disposal of the suit. It was

specifically warned in the said order that "If, the Defendants fail to comply this order in such case their defences will liable to be struck of and would not entitle to defend the suit with permission of the Court." Inspite of the directions to comply with the order dated 16th April,1999 within a period of one month from 2nd August,2001, the Petitioner did not deposit the arrears of rent nor monthly rent as it was required to be deposited by the 10th day of every month. The respondent therefore, moved an application for striking of the defence of the petitioner and such application was filed on 5th January,2002, and the same was replied to by the petitioner by filing affidavit-in-reply on 4th July,2002. After hearing the parties, the Trial Court, by its order dated 14th August,2002, while observing that "It is evident that the Defendant has not complied with the order of the Court dated 2nd August,2001 at all. As such practically speaking the defences of the Defendant are deemed to have already struck off and for non-compliance of the earlier order dated 2nd August,2001.", declared the defence of the defendant to have been struck off. The Petitioner

sought to challenge the said order in Revision Application no.172 of 2004 before the

Division Bench of the Small Causes Court, Bombay, but the same was dismissed by the impugned order dated 22nd September,2004.

2. The learned Advocate for the Petitioner, while challenging the impugned orders submitted that on account of the death of the mother of the petitioner, who was original tenant in relation to the suit premises and subsequently on the death of the Advocate who earlier appeared for the petitioner and his mother, it was not known as to what had transpired between the mother of the petitioner and her Advocate and in fact the amount was paid to her Advocate and the petitioner was not aware of the proceedings in the matter, and that therefore, the amount remained to be deposited, but the entire amount was deposited on 4th March,2003 subsequent to the order passed, during the pendency of the Revision application. The contention that the petitioner was not aware of the proceedings or the order of the Court directing to deposit the arrears within one month, is totally incorrect in view of the fact that the Petitioner was fully

aware of the proceedings initiated by the Respondent for striking of the defence for non compliance of the order dated 2nd August,2001, and

the same was sought to be contested by the Petitioner by filing Affidavit-in-reply dated 4th July,2002.

3. The learned Advocate for the Petitioner has drawn my attention to the decision of the learned Single Judge of this Court in the case "**Ramnivas B. Gupta Vs. Padmavai B. Amin**" reported in "**1986(1) All India Rent Control Journal 687**". That was the case wherein the suit for eviction was pending without making any progress for the period of 12 to 13 years inspite of the fact that the tenants had attempted to file six applications for expeditious hearing. During the said period of 13 years, there was lapse on the part of the tenants to deposit the rent on the due dates. In these circumstances, by imposing certain costs, delay was condoned. The said order was passed in the peculiar facts of that case and does not lay down any proposition of law on the point in issue in the matter in hand, and therefore, the same is of no hold in the decision of the matter in

hand.

4. It is pertinent to note that inspite of the fact that the petitioner was fully aware of the

order dated 2nd August,2001, and the opportunity given to the petitioner to clear the arrears of rent which were in fact required to be deposited in terms of order dated 16th April,1999, no attempt was made by the petitioner to deposit the said amount within one month from 2nd August,2001 nor even an attempt was made thereafter to deposit the said arrears. It is further pertinent to note that even the respondent sought to move for striking of the defence for non compliance of the order dated 2nd August,2001 by an application dated 5th January,2002, yet even while contesting the said application, no attempt was made by the petitioner to deposit the said arrears except disclosing lame excuse for not depositing arrears. This is not mere negligence on the part of the petitioner to deposit the arrears of rent, but the same discloses intentional avoidance on the part of the petitioner to pay the amount which was legally payable and due to the respondent in relation to the premises which are in occupation of the Petitioner. It clearly

discloses non compliance of the order of the Court on the part of the Petitioner who is in occupation of the premises belonging to Respondent. Therefore, it cannot be said that the Courts below have exercised their discretion illegally or

improperly. On the contrary it discloses that the Courts below have exercised their discretion judiciously. Being so there is no case for interference in the impugned orders in exercise of writ jurisdiction under Article 227 of Constitution of India. Hence, the petition fails and is hereby dismissed, with no order as to costs.

1.11.2004 (R.M.S.Khandeparkar, J.)